IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 540 OF 2005

Shri Raju Motwani ...Petitioner.

V/s

1. Shri Raju Motwani
and Anr. ...Respondents.

Mr. Subhash Jha i/b Law Global for the petitioner.
Mr. V.I. Kulkarni with Mr. S.H. Joshi for respondent No.1.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 29th March, 2005

P.C.:

1. In this Criminal Writ Petition on 14/3/2005, the following order is passed:-

> "1. Heard the learned counsel for the petitioner. Petitioner is challenging the order passed by the Chief Judicial Magistrate on 23/12/2004 whereby his application for permitting him to examine Company Secretary of M/s Polychem Limited as his defence witness has been rejected. The Trial Court to issue summons to the Company Secretary of M/s Polychem Limited and permit the petitioner to examine him as a defence witness. The summons to be issued to the Company Secretary

forthwith. The entire process of examining the said witness be completed within 8 weeks. The said evidence which will be recorded shall be without prejudice to the submissions which are likely to be made by the respondents. Petitioner to issue advocate's notice to respondents that the matter will appear on board on 4th April 2005. Petitioner also to serve copy of the petition and also order passed by this Court to respondents."

2. By virtue of the said order, present Criminal Writ Petition, in fact, does not survive. A reply has been filed by the respondent No.1 and in para 6 of the affidavit in reply certain allegations have been made against the petitioner. These allegations are allowed to be withdrawn and they are expunged from the affidavit in reply. In fact, when the papers were produced seeking urgent reliefs on 14/3/2005, the said order was passed to ensure that the trial is not stayed and the petitioner is permitted to examine the Company Secretary. The said order was passed to ensure that the trial is not delayed unnecessarily. Both the parties are entitled to submit before the Trial Court regarding relevance of the evidence of the defence witness and the trial court shall after

appreciating the evidence on record decide the case on its own merits and in accordance with law and also deal with the questions raised by the complainant regarding relevancy of the evidence adduced on behalf of the defence. With these directions, Criminal Writ Petition is disposed of. Liberty is, however, granted to the respondent No.1 to file an additional written statement in the trial court in view of the examination of defence witness by the accused.

V.M. KANADE, J.